IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10271 OF 2004

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| Kirit Kantilal Shah | ... | Petitioner |
| Vs. | | |
| Bai Prabhadevi Haridas Bhatia & Ors. | ... | Respondents |

Mr. Jaydeep Trivedi i/b Jurists Uno for the petitioner.

Mr. M.K. Nesari for respondents 2 to 5.

**CORAM: SMT. RANJANA DESAI, J.**

**DATED: 29TH MARCH, 2005.**

**P.C.**:-

1. The petitioner is original defendant 3. The respondents are the original plaintiffs/landlords. It is the case of the plaintiffs that the suit premises were let out to one Shivlal Nathubhai for residential purpose. After his demise, defendant 1 became entitled to tenancy rights. Defendant 1 has now acquired vacant possession of a suitable alternate accommodation. In contravention of the provisions of the Bombay Rent Act, defendant 1 had inducted defendants 2 and 3 in the suit premises. He has unlawfully sublet the suit premises. According to the plaintiffs, defendant 1 has changed the user of the suit premises and is also guilty of non-user of the suit premises. On these grounds, the plaintiffs sought a decree of eviction. Defendant 1 contested the suit. However, he did not step into the witness box. Defendant

3 contended that he has no independent right, title and interest in the suit premises. According to him, one Mrs. Taru K. Shah is in occupation of the suit premises as a licensee in pursuance of the leave and licence agreement executed by defendant 1 in her favour which was in subsistence on 1/2/1973. According to him, Mrs. Taru K. Shah is a protected licensee or deemed tenant in respect of the suit premises and, therefore, she ought to have been made a party to the suit. The trial court decreed the suit. The appeal carried by defendant 3 was dismissed and, hence, defendant 3 has approached this court.

2. I have heard the learned counsel for the petitioner/defendant 3. He contended that Mrs. Taru K. Shah is a necessary party and ought to have been impleaded as a party defendant. He contended that there is a written leave and licence agreement between defendant 1 and Mrs. Taru K. Shah. That agreement is executed in September, 1972. The learned counsel contended that inasmuch as Mrs. Taru K. Shah was a licensee staying in the suit premises pursuant to agreement dated 1/9/1972 and was in occupation on 1/2/1973, she is a deemed tenant and the trial court and the lower appellate court have failed to appreciate this material aspect in its proper perspective and, therefore, the impugned judgment and decree is perverse and the same is liable to be set aside.

3. I am unable to agree with the learned counsel. Defendant 1 has not stepped into the witness box. Defendant 1 has admitted in his written statement that he has inducted Mrs. Taru K. Shah in the suit premises. The plaintiffs have produced relevant documentary evidence in the nature of electoral roll for the period September, 1978 to January 1985, December 1967 to December 1972 which show that defendant 1 was in occupation and possession of the suit premises at the relevant period i.e. till 1977-78. The claim of Mrs. Taru K. Shah of being in possession of the suit premises by reason of leave and licence agreement dated 1/9/1972 on 1/2/1973 is, therefore, not substantiated by any evidence. In any case, whether Mrs. Taru K. Shah is a deemed tenant or not was not the issue before the court. The suit was filed inter alia on the ground of sub-letting which has been admitted by defendant 1. The plaintiffs have proved that defendant 1 has sublet the suit premises and has acquired suitable alternate accommodation. There are concurrent findings in favour of the plaintiffs on other issues also. No perversity is noticed in the impugned judgment and order. There is no substance in the petition. The writ petition is dismissed.

(SMT. RANJANA DESAI, J.)